

Special Needs Trusts

If you have a disabled child or family member, meeting that person's needs is a top priority. You provide physical and emotional support, arrange for care, and coordinate essential government benefits. What will happen when you're no longer able to make sure these things are being taken care of for your loved one? A "special needs" or "supplemental needs" trust offers the peace of mind you want — and the effective financial solution you need.

Planning Challenges

Estate planning for families with a disabled loved one can be complicated. You want to provide financial support so that your child or relative can receive needed care and continue to live as comfortably as possible. Unfortunately, the more traditional ways of providing financial support for a loved one — standard trusts, gifts, or inheritances, for example — can jeopardize a disabled beneficiary's eligibility for certain government benefits.

Many government benefit programs, both state and federal, are need based and are available only to those with very limited income and assets. If you transfer assets directly to your child, the money could end up going to pay for costly basic services that would otherwise be covered instead of providing the quality-of-life "extras" that you intended.

Another downside to transferring assets outright is that your disabled child or relative may not have the skills to manage them. It's not uncommon for a nondisabled beneficiary to struggle with managing a gift or inheritance. The challenge for someone with a disability is even greater.

Some families take a different approach and entrust a sibling or other relative with a disabled child's inheritance. There are drawbacks with this plan, as well. This type of arrangement does not ensure continuous care, and, because the assets are owned outright by the caregiver, there is no assurance that they will be used specifically for the benefit of the disabled individual. The caregiver could simply decide to spend the assets in other ways. The assets also are not protected against the caregiver's creditors. Finally, if the caregiver dies before the disabled individual, assets earmarked for that individual's care could pass to the caregiver's heirs instead.

A Special Solution

Although the situation is complicated, there is a solution: a well-constructed, carefully worded special needs trust (SNT). Very basically, an SNT allows you to leave assets to a loved one and preserve certain government benefits. Trust assets generally may be used to provide your disabled beneficiary with special or supplemental benefits, but not with certain other essentials, such as food, rent, medical care, or other basic benefits provided under a government program.

Trust assets are commonly used to pay for any number of extras: vacations; educational opportunities; specialized communication equipment and vehicles; recreational activities; vocational training; a service animal or pet; the services of an attorney, accountant, or other professional as needed; and so forth. Spending decisions are made by the trustee(s).

An SNT can be structured to receive gifts, so if other relatives are likely to provide financial support, their estate plans should be coordinated with your SNT. The funding for an SNT often comes from life insurance proceeds with the SNT named as the policy beneficiary.

You appoint one or more trustees to manage the SNT assets for the benefit of your child or relative according to the instructions you provide. You can give the trustee valuable guidance and insight by also providing a letter of intent: a written, detailed description of your loved one's daily life, likes and dislikes, health issues, and so on.

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Many Special Advantages

A special needs trust *may* be established with a disabled beneficiary's own assets (such as the proceeds from a lawsuit). Such trusts are called "self-settled" or "first-party" trusts. In addition to meeting strict state and federal eligibility guidelines, self-settled trusts are subject to a Medicaid "payback" clause.

SNTs established by a third party are the most common type of SNT. They are created and funded with the assets of a person other than the disabled individual. Since the disabled beneficiary does not have the legal authority to direct the trust assets, they typically are not counted as available resources. Such trusts can be established for a disabled beneficiary of any age, and there is no Medicaid payback clause. There are other advantages as well.

- The trust can be customized to provide for the disabled beneficiary's specific needs.
- The disabled beneficiary's eligibility for government benefits is preserved.
- Family conflict is avoided.
- The need for a court-appointed guardian to oversee the beneficiary's inheritance may be eliminated.
- Any assets remaining in the trust following the disabled beneficiary's death can be distributed to other beneficiaries specified in the trust agreement.

Choosing a Trustee

The trustee of an SNT has many important responsibilities. Appointing a professional fiduciary as trustee offers several advantages:

- Knowledge of federal, state, and local laws and assistance programs
- Expertise in creating special needs trusts
- Seamless services throughout the disabled beneficiary's lifetime
- Professional investment and asset management experience
- Recordkeeping and tax-filing services

Special needs trusts are complex and should be drafted by a qualified attorney. To be effective, they must be carefully structured and administered. Nonetheless, a special needs trust is an excellent solution when a disabled beneficiary is involved. Your professional advisors can help you put together a comprehensive estate plan that meets your family's unique needs.

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